

# WEBSITE TERMS AND CONDITIONS OF USE

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## OVERVIEW

- Welcome! This Website is owned by Townsville Auto Group Pty Ltd ACN 609 317 955 (**Pickerings, we, us and our**). Thank you for visiting.
- Pickerings provides this Website for You to view our product and service offerings.
- Set out below are the terms, conditions, and disclaimers (**Terms of Use**) for access to and use of our Website.
- Your visit to and use of our Website is subject to these Terms of Use. If You do not agree to these Terms of Use and/or our Privacy Policy, then You must stop using the Website.
- Please be aware that we also separately maintain our:
  - Privacy Policy (detailing our use and collection of data)
  - Parts Sale Agreement Terms and Conditions (detailing our sale and provision of motor vehicle parts)

## DEFINITIONS

### ACL

1. means the Australian Consumer Law as contained in the Competition and Consumer Act 2010 (Cth).

### Consequential Loss

2. means any one or more of the following:
  - a. Indirect loss;
  - b. Loss of revenue;
  - c. Consequential loss;
  - d. Loss in connection with third party claims;
  - e. Loss of reputation;
  - f. Loss of profits;
  - g. Loss of bargain;
  - h. Loss of actual or anticipated savings;

- i. Lost opportunities, including opportunities to enter into arrangements with third parties; and
- j. Loss or corruption of data.

### Intellectual Property

- 3. Includes all:
  - a. inventions, discoveries, innovations, novel or technical information and data, prototypes, processes, improvements, and patents, including all patents and patented applications, processes and products within the meaning of the Patents Act 1990 (Cth);
  - b. circuitry and circuit layouts, computer programs, software, code, drawings, plans, and specifications;
  - c. domain names, business names, trade marks, including any trade name, brand name, common law trade mark, or trade mark within the meaning of the Trade Marks Act 1995 (Cth);
  - d. designs, including all designs within the meaning of the Designs Act 2003 (Cth);
  - e. copyright material within the meaning of the *Copyright Act 1968* (Cth);
  - f. trade secrets and know-how; and
  - g. works, and all other works resulting from intellectual activity in the industrial, scientific, education, literary, or artistic fields.

### Privacy Policy

- 4. means our privacy policy relating to the collection and use of data

### Relevant Laws

- 5. means any State, Federal and/or international law/s applying to or otherwise governing You and/or Your conduct.

### Website

- 6. Means our website as located at the domain [www.townsvilleautogroup.com.au](http://www.townsvilleautogroup.com.au) and all content contained or otherwise displayed therein,

### You / Your

- 7. are references to you (whether an individual, business, corporation or other entity) as a user of our Website.

## **INTERPRETATION**

- 8. The following rules apply unless the context requires otherwise:

- a. headings are for ease of reference only and do not affect interpretation;
- b. the singular includes the plural and vice versa, and a gender includes other genders;
- c. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- d. a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- e. a reference to a clause is a reference to a clause of this document;
- f. a reference to an agreement or document is to the agreement or document (or schedule) as amended, varied, supplemented, novated or replaced, from time to time;
- g. a reference to a party to an agreement or document includes that party's successors, permitted substitutes and permitted assigns (and, where applicable, that party's legal personal representatives);
- h. a reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing;
- i. a reference to dates and times are to those dates and times in Queensland;
- j. a reference to "dollars", "\$" or an amount of money is to Australian currency;
- k. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions; and
- l. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.

## **AGREEMENT TO TERMS OF USE**

9. By and during Your access to and use of the Website, You agree that:
- a. You have read, understood, and agreed to be bound by these Terms of Use.
  - b. You have read, understand, and agree to be bound by Pickerings' Privacy Policy.
  - c. You are over the age of eighteen (18) years old and can give all consents and the making of all representations contained in the Terms of Use.
  - d. In addition to the express clauses of the Terms of Use, You will also comply with all Relevant Laws in relation to Your use of and interactions with us and the Website.
  - e. You waive, exclude, and agree to refrain from making use of any rights and legal actions which arise outside of the laws of Australia, to the maximum extent permissible by law that can be validly and legally be done by You, in relation to the Terms of Use and/or Your interactions with Pickerings.

- f. If You are accessing and using the Website on behalf of or during Your duties for another legal entity, such as a corporation, You represent that You are an authorised agent able to act on behalf of this entity and able to validly bind the entity to these Terms of Use.
  - g. You will not use the Website for any activities that breach any Relevant Laws, infringe the rights of third parties, or are contrary to relevant standards or codes.
  - h. You will not use the Website to harm or harass others.
  - i. You will not make fraudulent, speculative, or spam enquires, purchases, or requests through the Website.
  - j. You will not interfere with or damage or attempt to override any software or data associated with the Website.
  - k. You will not use any robot, spider or other device or process to mine, retrieve or in any way reproduce, modify, or obtain data or code from the Website.
  - l. You will not, except to the extent permitted by law, modify, adapt, sublicense, sell, reverse engineer, decipher, decompile, or otherwise disassemble any portion of the Website, or cause any other person to do so.
  - m. You will not reformat or reframe any portion of the Website or cause any other person to do so.
  - n. You will not take any action that would be reasonably likely to result in the infrastructure of our Website being overloaded or otherwise rendered non-functional.
10. You hereby represent and warrant that You are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Use and to abide by, and comply with, these Terms of Use.

## **DISCLAIMER AND INDEMNITIES**

11. You acknowledge and agree that the information contained on the Website:
- a. is general in nature only and is not purported to be comprehensive;
  - b. is current only at the time it is placed on the Website and we are under no obligation to update the information or correct any inaccuracy which may become apparent at a later time; and
  - c. is not intended to provide or make any recommendation or binding offer on which You may rely on for any purpose whatsoever.
12. All vehicles listed on the Website are subject to prior sale. Please check with us for the current status of all listed vehicles.
13. To the extent permitted by law, Pickerings and each of its related bodies corporate exclude all liability to You or anyone else for loss or damage of any kind (however caused or arising)

relating in any way to the Website including, but not limited to, loss or damage You might suffer as a result of:

- a. errors, mistakes, or inaccuracies in the content of the Website;
  - b. You acting, or failing to act, on any information contained on or referred to on the Website and/or any linked website;
  - c. personal injury or property damage of any kind resulting from Your access to or use of the Website;
  - d. any unauthorised access to or use of the Website's secure servers;
  - e. any interruption or cessation of transmission to or from the Website;
  - f. any bugs, viruses, trojan horses or other harmful code or communications which may be transmitted to or through the Website by any third party; and/or
  - g. the quality or fitness for any purpose of any linked websites.
14. You acknowledge and agree that Pickerings takes no responsibility for any direct, indirect, special, incidental or Consequential Loss, or any damage, however caused, suffered by You in connection with:
- a. Your use of the Website; or
  - b. Your use of or reliance on any information displayed, contained, or otherwise appearing on the Website.
15. You agree that You will at all times indemnify, and keep indemnified, Pickerings, its agents and contractors, and each of their related bodies corporate, including their directors, officers and employees from and against any loss (including reasonable legal costs and expenses on a full indemnity basis) or liability incurred or suffered by you or by any of them arising from any claim, demand, suit, action or proceeding by any person against you or them where such loss or liability arose out of, in connection with or in respect of Your conduct or Your breach of these Terms of Use.
16. You acknowledge and agree that You are responsible for any loss, damage, cost, expense, claim or liability we suffer or incur as a result of your violation of these Terms of Use or any breach by you of your responsibilities, representations and warranties.

## **ACCESS TO THE WEBSITE**

17. We may, in our complete and sole discretion, and without prior notice to You, cease making the Website available. In these circumstances, any existing orders (whether for goods or services) You have made and/or approvals You have obtained will not be affected unless the goods, services or approvals ordered are unavailable and/or we are, for any reason, unable to provide them to You.

## WARRANTIES

18. You warrant that:
  - a. All information and data provided by You to Pickerings via the Website or otherwise is true, accurate, complete, and up to date.
  - b. You have and will continue to comply with all Relevant Laws relating to Your use of the Website and your interactions and/or dealings with us.

## INTELLECTUAL PROPERTY

19. We and/or our subsidiaries or affiliates own or are otherwise permitted to use all Intellectual Property in and/or appearing on the Website and all related intellectual property rights, including copyright in these Terms of Use as a literary work.
20. You acknowledge and agree that all content, coding, graphics, images, animations, and Information available on the Website is protected by copyright, and other intellectual property rights and laws.
21. You cannot copy, reproduce, modify, republish, upload, post, transmit or distribute any part of the content set out in the Website, without Pickerings' prior written consent. However, You may download and print these Terms of Use and our Privacy Policy for Your personal non-commercial use.
22. You expressly acknowledge that using the Website does not give You any right, title or interest to the content set out in the Website, or any other aspect of the Website.
23. Your use of the Website, and the content set out therein, for commercial purposes is expressly prohibited, without our prior written consent, which may be withheld in our sole discretion.
24. We and/or our subsidiaries or affiliates have proprietary rights in (or are otherwise legally permitted to use) all trade marks and trade names which appear on the Website. Using a trade mark without the registered owner's consent infringes the owner's intellectual property rights.
25. By using the Website, You agree not to challenge Pickerings' and/or our subsidiaries, affiliates and/or business partners rights or ownership in respect of:
  - a. The domain name(s) for accessing the Website;
  - b. Any trade marks appearing on, or in connection with, the Website; or
  - c. Any material in which copyright subsists that is used in connection with the Website.

## LINKS TO OTHER SITES

26. You may from time to time be able, through hypertext or other computer links appearing within the Website, gain access to other websites operated either by Pickerings and/or our subsidiaries or affiliates (**Linked Sites**) or other third parties (**Third Party Linked Sites**).

27. The Linked Sites may have different terms of use.
28. Unless otherwise specified, the Third Party Linked Sites are not under the control of Pickerings and/or that of our subsidiaries or affiliates. The Third Party Linked Sites may have different terms of use and may be subject to different laws.
29. We are not responsible for the content of any Third Party Linked Sites, or any changes or updates to them. We provide these links for your convenience only. You follow a link to any such Third Party Linked Sites at your own risk.
30. Unless expressly stated in writing, Pickerings and/or our subsidiaries or affiliates are not a party to any transaction between you and a Third Party Linked Site.
31. Unless specified, Pickerings and/or our subsidiaries or affiliates do not sponsor, endorse, adopt, confirm, guarantee, or approve of any material or representations made in those Third Party Linked Sites.

## **SPAM**

32. Any publication of our email address or addresses on the Website and/or within these Terms of Use is to facilitate communications relating to the goods and services supplied by Pickerings and/or our subsidiaries or affiliates. It must not be inferred as consent by Pickerings and/or our subsidiaries or affiliates to receive unsolicited communications or an inappropriate volume of commercial messages.

## **LIABILITY – FAULTY PRODUCTS AND SERVICES**

33. In accordance the ACL, our goods and services may come with guarantees that are unable to be excluded.
34. Any guarantees pertaining to our provision of goods or services to You will be set out within the agreement/contract attaching to the provision of the relevant good or service.

## **CHANGES TO THESE TERMS OF USE**

35. We reserve the right to change these Terms of Use at any time without providing notice to You.
36. Any changes made under clause 35 take effect as at the time they are displayed online in these Terms of Use.
37. Where an order for goods and/or services has been made and accepted, the Terms of Use applicable to that order will be those that were in effect as at the time the order was placed.

## **FORCE MAJEURE**

38. Neither party shall be liable for any failure or delay or default in performance of their obligations arising under these Terms of Use if such failure or delay or default is caused by conditions beyond its control including but not limited to acts of god, government restrictions, pandemics,

wars, insurrections, disruption of essential services and/or any other cause beyond the reasonable control of the party whose performance is affected.

## WAIVER

39. Our failure to enforce any provisions contained within these Terms of Use shall not be construed as a waiver of any of our rights. Any waiver of any provision under these Terms of Use will only be effective if it is in writing and signed by us.

## SEVERABILITY

40. If any clause within these Terms of Use is invalid under any applicable law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary, the invalid clause will be deleted from the Terms of Use and the remaining clauses will remain in full force and effect. This clause has no effect if the severance alters the basic nature of these Terms of Use or is contrary to public policy.

## TRANSFER AND ASSIGNMENT

41. If Pickerings sells or otherwise changes control of its business or this Website to a third-party, Pickerings reserves the right, without giving notice or seeking consent, to transfer or assign the personal information, content and rights that Pickerings has collected from You and any agreements it has made with You.

## GOVERNING LAW

42. These Terms of Use are governed by and is construed in accordance with the law of the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and any court hearing appeals from those courts.
43. If You access the Website in or from a jurisdiction other than Australia, you are responsible for compliance with the laws of that jurisdiction, to the extent that they apply. Pickerings makes no representations that the content of the Website complies with the laws of any country outside Australia.

## CONTACT

44. All contact, queries or other correspondence regarding these Terms of Use should be directed to our legal representatives at [Macpherson Kelley Lawyers](#), as follows:
- a. By email to:
    - i. Address: [ipq@mk.com.au](mailto:ipq@mk.com.au)
    - ii. Subject: Terms of Use Query – Townsville Auto Group
  - b. By mail to:
    - i. Address: GPO Box 5299, Brisbane QLD 4001
    - ii. Attention: Intellectual Property Team – Terms of Use for Townsville Auto Group



45. Any correspondence relating to these Terms of Use will be deemed as dated on the date received by the recipient.

END OF AGREEMENT

*This Privacy Policy has been prepared with our legal team at  
[Macpherson Kelley Lawyers](#).*

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